

Shareholder's Rights in Chinese Corporation Law

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English Summary

The Corporation Law of the People's Republic of China was promulgated in December 1993. The law established the basic corporate institutions and ruled corporate activities. In October, 2005, the corporation law was completely amended. Compared with the corporation law from 1993, the 2005 law deals successfully with these relationships below regarding shareholder' rights:

1. The relationship between mandatory rules and default rules. Mandatory rules can not be modified by a corporation, while default rules can be changed. Corporation law has long been overall viewed as mandatory rules. But the law 2005 redefined the nature of many rules and increased the number of the default rules.

2. The relationship between corporate managerial organs and shareholders. Modern corporation law follows the basic principle the owning and controlling separated. Corporate management is charged by corporate managerial organs, while shareholders can not take part in it. But this agency relationship will make it easier to cause injury to shareholders. Hence, corporation law states that minority shareholders enjoy the right of presiding over the general meeting of shareholders, the right of derivate lawsuits, and so on.

3. The relationship between controlling shareholders and minority shareholders. Article 20 states: The shareholders of a company shall abide by laws, administrative regulations and the articles of association of the company, exercise their rights according to law, and shall not abuse their rights to damage the interests of the company or other shareholders nor abuse the independent status of corporate legal person and shareholders' limited liability to damage the interests of the company's creditors. The shareholders, who abuse their rights so as to cause losses to the company or other shareholders, shall undertake the liability for compensation.

4. The relationship of the substantive rights and procedural rights. Because Chinese corporation law is regarded as organization law, the core issue is how to rule the relationships between the various organs inside the corporation. The law should not only specify the status of the different subjects but also specify their rights and duties. Additionally, the law should state they how to exercise their rights and how to

fulfill their duties. What's more, it will involve in various relationships between these subjects.

The corporation law of China is a typical statute, following the traditions of the civil law, while American law belongs to the common law. The two law rooting different setting cause many different views to the law.

1. It is said that American law is the law of lawyers. In addition to statute, there are many precedents to follow. Lawyers play an important role on corporate legislature and its adjudication. While in china, not our lawyers but our scholars and the officers working in the standing committee of the People's National Congress always make more affection on the legislature. There is an interesting trend: law experts will publish their draft of some important laws, such as corporate law and property law, before the law is adopted. And then the law-making worker will also provide their own draft.

2. Corporation law is described as a nexus of contracts in America, while in China it is described as organization law. Generally speaking, Chinese scholars argue that organization law should regulate the organization's incorporating, operating, changing from one form to other form, and dissolving. From the American perspective, the firm is depicted as a nexus of contracts between the various claimants to a share of the gross profits generated by the business. These subjects not only includes shareholders but also includes employees, customers, suppliers, lenders, independent contractors, and others with whom the firm contracts or interacts in conducting business.

3. Corporation law is described as default rules in USA, while in China it is described as mandatory rules. The state corporation rules in USA can be changed by the firm's article or its bylaw. But Chinese corporation law prohibits a firm to change its provisions.

The provisions regarding shareholders' rights in Chinese corporation law, include general provisions and specific provisions. According to article 4 of corporation law, shareholders shall enjoy such rights as benefiting from assets of the company, making major decisions and selecting managerial personnel. And there are many other articles

to develop and specify the three basic rights as follows: 1.the right of drawing dividends; 2.the right of getting the remaining assets; 3.the right of voting; 4. the right of electing and being elected; 5.the right of information; 6.the right of suggestions and the inquiries; 7. the right of proposal; 8.the right of requesting special general meeting of shareholders; 9.the right of convening and presiding the general meeting of shareholders; 10.the right of the appraisal; 11.the right of requesting to dissolve its corporation; 12.the right of derivate lawsuits. But the types of the shareholder's rights is beyond the listed above.